



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0249; FRL-8724-03-R9]

#### **Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ 1987 PM<sub>10</sub> Moderate Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; availability of supplemental information and re-opening of comment period.

**SUMMARY:** On June 1, 2021, the Environmental Protection Agency (EPA) published in the *Federal Register* a proposal to rescind our previously issued clean data determination for the Yuma, Arizona “Moderate” nonattainment area for the 1987 24-hour national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). We also proposed to find that the Arizona State Implementation Plan (SIP) is substantially inadequate to attain or maintain the PM<sub>10</sub> standard and to therefore issue a “SIP call” requiring Arizona to revise the SIP to address this inadequacy. Due to an administrative oversight, the contents of the rulemaking docket were not available for the full 30-day comment period. Therefore, the EPA is re-opening the comment period for the proposed rule for an additional 30 days. Furthermore, in response to a letter received during the initial comment period, we are also specifically seeking comment regarding the appropriate attainment date for the Yuma PM<sub>10</sub> nonattainment area.

**DATES:** The comment period for the proposed rule published at 86 FR 29219 on June 1, 2021, is reopened. Comments must be received on or before **[Insert date 30 days after date of publication in the *Federal Register*]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0249 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once

submitted, comments cannot be edited or removed from *www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section.

**FOR FURTHER INFORMATION CONTACT:** John J. Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4151, [kelly.johnj@epa.gov](mailto:kelly.johnj@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our,” refer to the EPA.

On June 1, 2021, the EPA published in the ***Federal Register*** a proposal to rescind our previously issued clean data determination for the Yuma PM<sub>10</sub> nonattainment area.<sup>1</sup> We also proposed to find that the Arizona SIP is substantially inadequate to attain or maintain the PM<sub>10</sub> standard and to issue a SIP call requiring Arizona to revise the SIP to address this inadequacy. We proposed to require Arizona to submit this Moderate nonattainment plan SIP submission within 18 months of finalizing the SIP call and to set a new attainment date of no later than December 31, 2025, because the original maximum attainment date for this area under Clean Air

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<sup>1</sup> 86 FR 29219.

Act (CAA) section 188(c)(1) was December 31, 1994 (approximately four years from the original designation).<sup>2</sup> We proposed a deadline for reasonably available control measures to be fully implemented in the area by January 1, 2025, but also recommended that reasonable controls be fully implemented as early as January 1, 2023. Earlier implementation of reasonable controls would allow high-wind dust events during the three-year period preceding the proposed attainment date potentially to be considered “natural events” under the EPA’s exceptional events rule.<sup>3</sup>

The public comment period for the proposed rule started on June 1, 2021, and ended on July 1, 2021. Due to an inadvertent administrative oversight, the EPA did not post all the documents contained in the docket until June 23, 2021. The EPA is re-opening the comment period for the proposed rule for an additional 30 days, to allow for a full comment period with access to the docket.

During the comment period, the EPA received comments from seven commenters including the Arizona Department of Environmental Quality (ADEQ). In its comment letter, ADEQ noted that the EPA’s authority to establish a new attainment date is contained in section 110(k)(5), which allows the EPA to adjust any dates applicable to the relevant requirements “as appropriate;” that such adjusted dates could include the attainment date if the original attainment date had elapsed; and that CAA section 188(c)(1) “establishes two alternative attainment deadlines for moderate PM<sub>10</sub> nonattainment areas: four years after designation for areas designated in 1990, and six years after designation for all other areas.”<sup>4</sup> ADEQ asserted that the CAA does not require the EPA to set the new maximum attainment date according to the shorter deadline and that “the six-year deadline would be more ‘appropriate’” for the Yuma PM<sub>10</sub> nonattainment area.<sup>5</sup> In particular, ADEQ asserted that the EPA’s recommended schedule for

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<sup>2</sup> 86 FR 29221.

<sup>3</sup> Id. at footnote 40 (citing 40 CFR 50.14(b)(5)(ii)).

<sup>4</sup> Letter dated June 30, 2021 from Daniel Czecholinski, Air Quality Division Director, ADEQ, RE: Proposed Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ PM<sub>10</sub> Moderate Nonattainment Area, 2.

<sup>5</sup> Id. (quoting CAA section 110(k)(5)).

implementation of reasonable controls by January 1, 2023, “which envisions *implementation nineteen months* after EPA’s *proposed* finding is completely unrealistic.”<sup>6</sup>

In response to ADEQ’s comment, we are now also seeking comment on a possible alternative attainment date for the Yuma PM<sub>10</sub> nonattainment area. As noted by ADEQ, given that the original attainment date of December 31, 1994, has elapsed, CAA section 110(k)(5) provides the EPA with discretion to adjust this date “as appropriate.”<sup>7</sup> We initially proposed an attainment date of December 31, 2025, based on the fact that the Yuma area’s original attainment date was approximately four years from its designation as a nonattainment area in 1990. However, as also noted by ADEQ, for other Moderate PM<sub>10</sub> nonattainment areas, CAA section 188(c)(1) sets a maximum attainment date of the end of the sixth calendar year after the area’s designation as nonattainment. Therefore, we are specifically seeking comment on whether we should set a maximum attainment date of December 31, 2027 (roughly six years from the expected SIP call effective date), rather than December 31, 2025 (roughly four years from the expected SIP call effective date), for the Yuma PM<sub>10</sub> nonattainment area, if we finalize our proposed finding of inadequacy and SIP call.

We are also again soliciting public comments on all issues discussed in our June 1, 2021 proposal. We will accept comments from the public on that proposal until the date listed in the DATES section above. We will consider all comments received during both the initial comment period and this second comment period before taking final action.

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Pollution.

**Authority:** 42 U.S.C. 7401 *et seq.*

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<sup>6</sup> Id. (emphasis in original).

<sup>7</sup> CAA section 110(k)(5) (“Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).”).

Dated: October 5, 2021.

Deborah Jordan,  
*Acting Regional Administrator,*  
*Region IX.*

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